BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DONNA GUTHRIE
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-441
Case No. 84-6815

S.S.A. No.

DENNISON EASTMAN CORPORATION
c/o L.A.J. MILLER & ASSOCIATES

Employer Account No.

EMPLOYMENT DEVELOPMENT DEPARTMENT

The Department appealed from the decision of the administrative law judge which held that the employer's reserve account was relieved of benefit charges.

STATEMENT OF FACTS

The claimant was employed for approximately two years as a handworker in a tag and label manufacturing plant. She was paid $5.29 per hour and was a member of the Graphic Communication Workers Union. The claimant was discharged effective December 17, 1983 for failing to report to work and for failing to give notice she would not be at work.

The claimant filed a claim for unemployment insurance benefits effective January 1, 1984. The Department issued a determination and ruling on February 14, 1984, in which it held that the claimant was not disqualified under section 1256 of the code and that the employer's reserve account was subject to charges.

On February 17, 1984, the employer mailed a letter to the Department in which it stated the letter was not to be considered an appeal. It did, however, direct

the Department's attention to section 1256.5 of the code and suggested that section should be considered in conjunction with the claimant's termination.

In response to this letter, the Department issued a reconsidered determination on March 22, 1984. In it the determination and ruling of February 14, 1984 were reaffirmed, but the claimant was held to be disqualified under section 1256.5 of the code. No relief was accorded the employer's reserve account in the reconsidered determination. The employer filed an appeal within 20 days from the issuance of the reconsidered determination. It did not contest the 1256.5 disqualification, but it did protest the potential chargeability to its reserve account.

REASONS FOR DECISION

Section 1256.5 of the code provides:

"(a) An individual is disqualified for unemployment compensation benefits if the director finds that he or she was discharged from his or her most recent work for chronic absenteeism due to intoxication or reporting to work while intoxicated or using intoxicants on the job, or gross neglect of duty while intoxicated, or otherwise left his or her most recent employment for reasons caused by an irresistible compulsion to use or consume intoxicants, including alcoholic beverages. An individual disqualified under this section, under a determination transmitted to him or her by the department, is ineligible to receive unemployment compensation benefits under this part for the week in which the discharge occurs, and continuing until he or she has performed service in bonafide employment for which remuneration is received equal to or in excess of five times his or her weekly benefit amount, or until a physician or authorized treatment program administrator certifies that the individual has entered into and is continuing in, or has completed, a treatment program for his or her condition and is able to return to employment.

"(b) The department shall advise each individual disqualified under subdivision (a) of the benefits available under Part 2 (commencing with Section 2601), and, if assistance in locating an appropriate treatment program is requested, refer the individual to the appropriate county drug or alcohol program administrator."

Section 1030 of the California Unemployment Insurance Code provides in pertinent part that the claimant's most recent employer at the time of filing of the claim is entitled to a ruling if it submits, within 10 days after the mailing of the notice of new or additional claim, any facts disclosing whether the claimant left such employer's employ voluntarily and without good cause or was discharged for misconduct connected with his work. This period may be extended for good cause.

Section 1032 of the California Unemployment Insurance Code provides in part that an employer's account shall be relieved of benefit charges if it is ruled under section 1030 of the code that the claimant was discharged for misconduct connected with his work.

Section 1332 of the code provides, in pertinent part, that the Department may reconsider a determination within 15 days after an appeal is filed or within 20 days when no appeal is filed and there is good cause to reconsider.

The original determination in this matter became final on March 5, 1984, by which time the employer had not filed an appeal. Accordingly, the claimant is not disqualified from receiving benefits under section 1256 of the code and the employer's reserve account is not relieved of charges.

With respect to the "redetermination" of March 22, 1984, it was issued well beyond the period permitted in section 1332 and it should be treated as a determination only with respect to the issue under section 1256.5 of the code, and we so treat it for purposes of the appeal before us.

The language in sections 1030 and 1032 of the code deals explicitly with facts provided by the most recent employer or a base-period employer which disclose whether or not a claimant "voluntarily left employment without good cause," or was "discharged because of misconduct." Logically enough, section 1256 of the code contains the same two phrases. Section 1030, subsection (c), also provides that the Department consider the information and notify the employer of its ruling as to the cause

of termination; i.e., voluntarily quit without good cause, or discharge for misconduct. As far as we are aware, the Department is empowered to issue a ruling only under circumstances enumerated in section 1030 of the code.

Section 1256.5 does not contain the phrases "voluntarily quit without good cause" or "discharged for misconduct," and nowhere in section 1030 is the Department authorized to issue a ruling based on facts indicating a discharge for any reason other than misconduct, including those set out in section 1256.5 of the code.

A review of the recent history of section 1256 of the code, as it has been applied in situations where absenteeism and tardiness have been caused by chronic alcoholism, reveals that such conduct is viewed as nonvolitional if shown to be the product of an irresistible compulsion to drink (Jacobs v. California Unemployment Insurance Appeals Board (1972), 25 Cal. App. 3d 1035). Under such circumstances, a voluntary quit or a discharge are not disqualifying and do not result in relief to the employer's reserve account.

The enactment of section 1256.5 of the code merely reflects the concern of the legislature that alcoholism is an all too common social disease over which its victims have little control and that the denial of benefits for nonvolitional conduct is harsh. On the other hand, the legislature has expressed its intent that the victim not be granted unemployment insurance benefits unless and until he or she can demonstrate that positive steps have been taken to obtain rehabilitation. Consequently, under this statute, the claimant will receive no benefits until he or she adopts a more responsible position by seriously addressing the problem of his or her alcoholism to a degree sufficient to permit him or her to return to work.

It does not follow that the enactment of this statute entitles the employer to a ruling, however. If the legislature had meant to provide relief to employers in such cases, it could have amended section 1030 to incorporate into it language reflecting the facts upon which a determination under section 1256.5 is rendered which would permit the Department to issue a ruling. It did so when section 1256 was amended to accommodate claimants who leave work to accompany a spouse to a remote location.

It also provided employers relief for students employed on a temporary basis and whose employment began within and ended at the end of a vacation period. We can only conclude that no amendment was made to section 1030 with regard to section 1256.5 because the legislature did not intend that any ruling should be issued when a determination is made under that section of the code. We reverse the administrative law judge's decision accordingly.

DECISION

The decision of the administrative law judge is reversed. The employer is not entitled to a ruling under a determination issued under section 1256.5 of the code.

Sacramento, California, March 28, 1985.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT L. HARVEY, Chairman

JAMES J. HAGARTY

HERBERT RHODES

LORETTA A. WALKER

CHET WRAY

J. RICHARD GLADE

DEBRA A. BERG